

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5876 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

K V BHUNDIA

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Petitioner

MR HL JANI for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/12/96

ORAL JUDGEMENT

1. The petitioner, a City Survey Superintendent of the Revenue department of the State of Gujarat, filed this writ petition before this court and challenge has been made therein to the order dated 30th November, 1983 under which he was ordered to be removed from the Government service on an alleged misconduct after holding a departmental inquiry.

2. Briefly the facts of the case are that the petitioner was served with a chargesheet dated 28th April, 1980 containing four charges. First charge was to the effect that the petitioner is a married man and without giving divorce to his wife the petitioner is keeping illicit relations with one lady, namely Naliniben and out of that relation a daughter was born to the said lady. This conduct of the petitioner is a conduct unbecoming of the Government servant being against the provisions of rule 3(1)(iii) of Gujarat Civil Service (Conduct) Rules, 1971. The second charge was that the petitioner has not informed the Government within reasonable time regarding the proceedings instituted by his wife against him under sec.125(3) of Cr.P.C. This conduct was said to be against the provisions of rule 18 of Gujarat Civil Service (Conduct) Rules, 1971. The third charge was to the effect that the wife of the petitioner had obtained an order for maintenance and the petitioner has not paid the said amount and as such, he was a debtor and that fact has also not been informed by him which is against the provisions of rule 17(1) of the Rules aforesaid. The fourth charge was that though the respondent no.2 has directed the petitioner to produce the copy of the judgment and order of the court, passed in the proceedings initiated by his wife under sec.125(3) Cr.P.C. he has not produced the same before the said authority. An inquiry has been conducted in this case by the Special Officer for Departmental Inquiry Officer (Gazetted Officer), Ahmedabad. The Inquiry Officer submitted his report dated 22-12-1981 to the Government. After considering the report of the Inquiry Officer the charges no.1 and 2 were found proved against the petitioner whereas in respect of charge no.3 the petitioner was exonerated. The petitioner was given a show-cause notice alongwith the inquiry report to show cause why he should not be removed from the services for the proved misconduct. The petitioner submitted a reply to the show-cause notice. The petitioner has also been given an opportunity of personal hearing. Under the order, impugned in this Special Civil Application dated 30th November, 1983, the Government has ordered for removal of the petitioner from services. Hence this Special Civil Application.

3. None of the respondents have filed reply to this Special Civil Application. The contents of the Special Civil Application therefore stands uncontroverted.

4. Though manifold contentions have been raised by the learned counsel for the petitioner challenging the

validity of the order impugned in this Special Civil Application, but I am satisfied that one of the grounds that the petitioner was not given the relevant documents before the inquiry officer and on which this petition is likely to be accepted, I do not consider it appropriate to discuss and decide all the grounds raised.

5. In the reply to the show-cause notice, a copy of which has been filed as annexure 'E' on the record of this case, the petitioner has submitted that the Inquiry Officer procured the documents from Civil surgeon and the Municipal Corporation, Jamnagar by sending his own officer somewhere on 19th December, 1981. He submitted his report on 22nd December, 1981. After submission of the report, the petitioner was supplied with the document i.e. the certificate obtained from the civil surgeon and the Municipal Corporation, Jamnagar. Those documents were relied upon by the Inquiry Officer and a finding has been given against him on two charges that the petitioner has illicit relation with a third lady and out of that relation, a daughter has also been born. The petitioner was not given any opportunity during the course of inquiry in respect of those two documents, which has resulted in causing prejudice to him in the defence. In the impugned order, a reference of this contention has not been made. The disciplinary authority has relied upon the certificate of birth obtained by the Inquiry Officer from the Jamnagar Nagar Palika wherein the name of Naliniben is mentioned as mother and relying on this document, a finding has been given that the petitioner has illicit relation with other woman Smt. Naliniben and out that relation one daughter has also been born. So it is a case where the Inquiry Officer as well as the Disciplinary Authority have relied upon the documents for giving a finding on the charges against the petitioner. As those documents were not made available to him, the petitioner was not given any opportunity for defence and to give his explanation on those documents. The matter would have been different where the documents were not taken into consideration and relied upon, but as stated earlier, the documents aforesaid were made the basis for giving the finding on the charges against the petitioner.

6. In the result, this Special Civil Application succeeds and the impugned order of removal of the petitioner from services dated 30th November, 1983 is set aside and the matter is sent back to the disciplinary authority to pass a fresh order after giving an opportunity of hearing to the petitioner and after furnishing the copies of those two documents and giving him an opportunity of producing his own defence.

Thereafter the matter may be decided afresh in accordance with law. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-